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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

'07 CV 2308 L JMA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. THOMAS J. SAIZ, and CALDERON, JAHAM & OSBORN, an accountancy corporation, Defendants.	Case No. **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of

the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district, and the Defendants reside and/or are located in this district.

SUMMARY

3. This case involves false and misleading statements by Defendants Thomas J. Saiz, a certified public accountant, and his accountancy corporation, Calderon, Jaham & Osborn in connection with municipal securities offerings by the City of San Diego (the "City"). Defendants were the independent auditor for the City for fiscal years ended June 30, 2001 and 2002. In that capacity, Defendants drafted the footnote disclosures to the City's financial statements; issued unqualified audit reports for these fiscal years stating that the City's financial statements were presented in conformity with generally accepted accounting principles ("GAAP") and that the audits were performed in accordance with generally accepted auditing standards ("GAAS"); and consented to the City including the audit reports in the offering documents for its five 2002 and 2003 municipal securities offerings that raised approximately $261 million from investors. Defendants violated the antifraud provisions of the Securities Act and Exchange Act because:

(a) their footnote disclosures to the financial statements, which were included in the City's offering documents, contained materially false and misleading statements regarding the City's funding of its pension and retiree health care obligations; and

(b) their audit reports were false and misleading because the City's pension and retiree health care obligations were not presented in conformity with GAAP and Defendants' audits of those obligations were not performed in accordance with GAAS.

DEFENDANTS

4. Thomas J. Saiz ("Saiz") is a resident of El Cajon, California. He is a certified public accountant licensed with the State of California since 1992. He joined Calderon, Jaham & Osborn in 1989, became a shareholder in 1996, and became its sole shareholder in 2000.

5. Calderon, Jaham & Osborn ("CJO"), an accountancy corporation, is an active California corporation with a registered office in La Mesa, California. It is licensed with the California Board of Accountancy. During 2001 and 2002, CJO had approximately 30 employees.

RELATED PARTIES

6. The City of San Diego, California, is a California municipal corporation with all municipal powers authorized by the California Constitution and laws, including the power to issue debt. The City is the seventh most populous city in the country, with approximately 1.3 million residents. CJO performed annual audits of the City financial statements for fiscal years ended June 30, 2001 and 2002. For these years, respectively, the City had total revenues of $1.2 billion and $2 billion and total assets of $15 billion and $10 billion.

7. San Diego City Employees' Retirement System ("CERS") is a multiple-employer, defined benefit plan established by the City to provide retirement benefits to its members, i.e., City employees and their beneficiaries. CJO performed audits of CERS's financial statements for fiscal years ended June 30, 2001 and 2002. For these years, CERS had net assets of $2.5 billion. Additionally, it had, respectively, revenues of $110 million and $86 million in fiscal years ended June 30, 2001 and 2002.

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THE DEFENDANTS' FRAUDULENT CONDUCT

A. The City's Pension Plan

8. The City provides a defined benefit pension plan and retiree health care benefits to its employees through CERS. The actuary retained by CERS determines each year the value of the plan's assets and liabilities and the required pension contributions. The City and the employees each pay a portion of the required contributions.

9. In the disclosure to investors of the City's pension obligations and funding of those obligations, at least three concepts were material:

(a) CERS's funded ratio, i.e., the ratio of its assets to liabilities;

(b) The City's unfunded liability to CERS, i.e., the dollar shortfall between CERS's assets and liabilities; and

(c) The City's net pension obligation, also called the NPO, i.e., the cumulative difference between what the City actually contributed to CERS and the amount that the City would have contributed had it conformed to a funding method recognized by the Government Accounting Standards Board ("GASB").

10. In 2001 and 2002, as shown on the chart below, as calculated by the CERS actuary, CERS's funded ratio fell substantially, and the City's unfunded liability and net pension obligation increased dramatically. In addition, as also shown on the chart below, the actuary projected that CERS's funded ratio would continue to fall and the City's unfunded liability, and net pension obligation would continue to substantially increase:

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Fiscal Year ending	Funded Ratio	Unfunded Liability	Net Pension Obligation
6/30/00	97.3%	$69 million	$23.05
6/30/01	89.9%	$284 million	$30.98 million
6/30/02	77.3%	$720 million	$39.23 million
6/30/09 projected	65.6%	$2 billion	$446 million

11. The City conducted its own analysis in mid-2003, which yielded similar projections.

12. This fall in CERS's funded ratio and the increase in the City's unfunded liability and net pension obligation was the result of many factors, including:

(a) CERS twice agreed to permit the city to underfund its annual contributions to CERS, as further alleged below;

(b) The City used surplus earnings to pay additional pension and other non-pension benefits to on behalf of CERS's members, as further alleged below; and

(c) CERS suffered substantial investment losses in fiscal years 2001 and 2002 -- $193.2 million in fiscal year 2001 and $364.8 million in fiscal year 2002.

1. CERS Agrees To Two Proposals By The City Permitting The City To Underfund Its Annual CERS Contributions

a. CERS Agrees To The City's Proposal In 1997 To Underfund Its Pension Obligations—"Manager's Proposal 1"

13. In fiscal year 1996, the City agreed to increase significantly and retroactively all employees' pension benefits. Because the City could not afford to fund the cost of the benefit increases, it made them contingent on CERS's

agreement to the City's underfunding of its annual contribution to CERS.

14. In fiscal year 1997, the City and CERS entered into an agreement, referred to as Manager's Proposal 1, that allowed the City to intentionally underfund its annual liability to CERS in fiscal years 1997 through 2006. This funding method was not approved by GASB. Manager's Proposal 1 also required that if CERS's funded ratio fell below 82.3%, the City would have to increase its CERS contribution.

15. As part of Manager's Proposal 1, CERS, at the City's request, recorded $39.2 million from the surplus earnings as a net pension obligation "reserve" or "NPO Reserve." The amount represented the difference between what the City would have contributed under a GASB-accepted funding rate and what the City actually contributed under Managers Proposal 1. The NPO reserve, despite its name, was not a true reserve. Therefore, the creation of this "reserve" entry had no effect on CERS's funded ratio or the City's unfunded liability to CERS.

b. CERS Agrees To The City's Proposal In 2002 To Extend The Time It Would Underfund Its Pension Obligations—"Manager's Proposal 2"

16. In the second half of fiscal year 2002, the City agreed to again increase pension benefits for fiscal year 2003. From as early as October 2001, however, the City was aware that CERS's funded ratio would likely fall below the 82.3% floor established by Manager's Proposal 1, which would require the City to increase its annual fiscal year 2004 contribution to CERS by at least $25 million. The actuarial reports as of February 2002 also confirmed this downward trend in the funded ratio.

17. Concerned about likely having to pay the additional amount, the City conditioned the pension benefit increases on the City's obtaining from CERS relief from the floor of Manager's Proposal 1. In November 2002, the City and CERS

agreed to Manager's Proposal 2, which provided that once CERS's funded ratio fell below the 82.3% required by Manager's Proposal 1, the City would have five years to increase its CERS contributions to reach a GASB-accepted funding rate. Manager's Proposal 2 thus effectively allowed the City an additional five years to underfund its annual CERS contribution.

2. The City Used Surplus Earnings For Non-Pension Purposes

18. For the purpose of the annual actuarial calculations, the CERS actuary assumed a projected 8% rate of return. Any actual earnings above 8% were considered to be surplus earnings to be used in years in which the earnings fell below the assumed return rate.

19. Since the early 1980s, the City used CERS's surplus earnings to fund an ever-increasing amount of additional non-pension benefits for CERS members including, but not limited to, paying retiree health care benefits and funding certain portions of the employee pension contributions.

20. In total, the City used surplus earnings of $150 million as of the end of fiscal year 2001 and an additional $25 million as of the end of fiscal year 2002 primarily to fund non-pension benefits for CERS members. From fiscal years 1997 through 2003, this use by the City of surplus earnings accounted for 17% of the increase in the City's unfunded liability to CERS.

B. The City's 2002 and 2003 Municipal Securities Offerings

21. In 2002 and 2003, the City conducted five municipal securities offerings totaling $261,850,000 in par value. These offerings were entitled:

- $25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002B (Fire and Safety Project) (June 2002);
- $93,200,000 City of San Diego, 2002-03 Tax Anticipation Notes Series A (July 2002);
- $15,255,000 City of San Diego/Metropolitan Transit Development

Board Authority 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding) (April 2003);

- $17,425,000 City of San Diego 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Park Refunding) (May 2003);
- $110,900,000 City of San Diego 2003-04 Tax Anticipation Notes Series A (July 2003).

22. For each of the offerings, the City issued offering documents that purported to disclose the material information regarding the offering and the City. The offering documents included the City's fiscal year 2001 and 2002 financial statements. Saiz and CJO's role in these offerings was twofold. First, as further alleged below, Saiz drafted the footnote disclosures to the City's financial statements, which draft disclosures were subject to review and approval by the City. Second, as further alleged, Saiz and CJO consented to the inclusion in the offering documents of CJO's unqualified fiscal year 2001 and 2002 audit reports on the City's financial statements.

C. Saiz And CJO Draft False And Misleading Footnotes To The City's Financial Statements

23. Saiz drafted footnote disclosures for the City's fiscal year 2001 and 2002 financial statements, which were subject to the review and approval of the City, that included false and misleading information regarding the City's funding of CERS, the City's NPO, and the City's retiree health care obligations. These false and misleading statements were included in the City's offering documents for its 2002 and 2003 municipal securities offerings.

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1. Saiz Drafts False And Misleading Financial Statement Footnotes Regarding The City's Funding Of CERS

24. Saiz drafted footnote disclosures for the City's financial statements that included the following false and misleading information regarding the City's funding of CERS:

(a) The 2002 financial statement footnotes falsely stated that the City's method for funding CERS included "a provision to assure the funding level of [CERS] would not drop below a level [CERS's actuary] deem[ed] reasonable to protect the financial integrity of [CERS]." In fact, this statement was false and misleading in that CERS's funded ratio at the end of fiscal year 2002 was 77.3%, which was less than the 82.3% that the CERS actuary deemed reasonable. Further, the footnote failed to disclose that (i) Manager's Proposal 1 had established a trigger level of 82.3% for the funded ratio; (ii) by the latter half of fiscal year 2002, the City was aware that CERS funded ratio would likely fall below this trigger level; and (iii) if Manager's Proposal 2 were not approved, the City would have had to make a large additional payment to CERS.

(b) The 2002 financial statement footnotes also falsely stated that CERS's actuary believed that the City's funding method was an excellent method for the City and was superior to certain GASB-accepted funding methods. In fact, this statement was false and misleading in that the actuary ceased to have this view once CERS's funded ratio fell below 82.3%.

(c) The 2001 financial statement footnotes also falsely stated that CERS's actuary "is in the process of requesting the GASB to adopt the [City's] funding method as an approved expending method which would eliminate any reported NPO." In fact, although the CERS actuary had initiated communication with GASB, GASB had never responded.

25. As required by GAAS, Saiz read the information in the City's 2003 offering documents and learned that in fiscal year 2002, CERS's funding ratio had

fallen from 89.9% to 77.3% and that the City's unfunded liability to CERS had increased from $284 million to $720 million. Despite this substantial negative change, Saiz flagged these issues for the 2003 audit but did not conduct any inquiry into the facts or determine whether the 2002 financial statement footnotes needed to be revised. Had Saiz inquired, he would have learned that in fiscal year 2002, the City was aware that CERS's funding ratio would likely fall below the 82.3% trigger level and the City had proposed Manager's Proposal 2 to avoid the City being required to make a large additional payment to CERS, and that in early fiscal year 2003, the City and CERS had agreed to Manager's Proposal 2, which extended the time for the City to underfund CERS and increased the amount by which the City could underfund CERS.

26. Saiz also never inquired of CERS's actuary whether the statements in the offering documents' financial statement footnotes regarding the actuary's opinions and actions were true. Had Saiz inquired, he would have learned that the actuary did not support the City's funding method after CERS's funded ratio fell below 82.3% and that as of the 2001 audit, GASB had never responded to the actuary's request to approve the City's funding method.

2. Saiz Drafts False And Misleading Footnotes Regarding the City's NPO

27. Saiz drafted footnote disclosures for the City's financial statements that included the following false and misleading information regarding the City's net pension obligation, or NPO:

(a) The City's 2002 financial statements reported that the City's NPO was $39.2 million as of the end of fiscal year 2001, but failed to disclose that at the time of the 2003 offerings, the City had already calculated that its NPO for fiscal year 2003 would be $51.9 million; and

(b) The City's 2001 and 2002 financial statements reported that the NPO was "funded in a reserve," when, in fact, there was no such reserve.

28. Saiz read the information in the City's 2003 offering documents and learned that in fiscal year 2002, CERS's funding ratio had fallen from 89.9% to 77.3% and that the City's unfunded liability to CERS had increased from $284 million to $720 million. Despite this substantial negative change, and although Saiz flagged these issues for the 2003 audit, he did not conduct any inquiry into the facts or determine whether the financial statement footnotes needed to be revised. Had Saiz inquired, he would have learned that prior to the 2003 offerings, the City had already calculated that its NPO for fiscal year 2003 had grown from $39.2 million to $51.9 million.

29. Saiz signed the unqualified audit reports without understanding the meaning of his statement that the NPO was "funded in a reserve." As both the City's and CERS's auditor, Saiz had access to all of their records and personnel. Saiz, however, did nothing during the audits to understand the statement or to ensure its accuracy. Had he done so, he would have discovered that the NPO "reserve" was not, in fact, a reserve.

3. **Saiz Drafts Misleading Financial Statement Disclosures Regarding the City's Retiree Health Care Obligation**

30. Saiz drafted footnote disclosures for the City's financial statements regarding the City's retiree health care obligations, which stated that the City provided such benefits to certain retirees at a cost of $7.2 million in fiscal year 2001 and $8.9 million in fiscal year 2002 and that "expenses for [such retiree health care benefits] are recognized as they are paid." This statement was misleading because there was no disclosure that the retiree health care expense was being paid with surplus earnings from CERS; that this surplus earnings reserve was running out of money; and that the City would have to begin paying this

substantial expense out of its own budget.

31. As auditor for both the City and CERS, Saiz knew in 2001 that CERS was paying for this expense with surplus earnings. Nevertheless, he failed to disclose this critical information in the 2001 and 2002 financial statements.

D. Saiz Signs False Audit Reports

32. For fiscal years ended June 30, 2001 and 2002, CJO issued unqualified audit reports on the City's financial statements stating that the City's financial statements were fairly presented in conformity with GAAP and that the audits were performed in accordance with GAAS. Saiz signed the unqualified audit reports on behalf of CJO.

33. Saiz and CJO consented to allow the City to include CJO's audit reports in the City's offering documents for its 2002 and 2003 municipal securities offerings. As further alleged below, Saiz and CJO's audit reports were false in that the City's financial reports were not fairly presented in conformity with GAAP and their audits were not conducted in accordance with GAAS.

34. For the City's financial statements to be presented fairly in conformity with GAAP, the City was required to account, and provide footnote disclosure, for its pension in accordance with GASB Statement 27, "Accounting for Pensions by State and Local Governmental Employers." GASB Statement 27 requires disclosure of an employer's policy for funding its pension plan; its NPO; and factors that significantly affect the identification of trends in the amounts of the plan's funded ratio or the employer's unfunded liability to its plan. As alleged above, the City's financial statements contained false and misleading information regarding the City's funding method for CERS and its NPO and were not presented in accordance with GAAP.

35. GAAS requires that the audit be performed by a person or persons having adequate technical training and proficiency as an auditor and the auditor with final responsibility for the engagement should know, at a minimum, the

relevant professional accounting and auditing standards and should be knowledgeable about the client. AICPA Codification of Auditing Standards, AU §§ 210.01 & 230.06. As alleged above, Saiz failed to have sufficient proficiency as an auditor in that he did not understand what "funded in a reserve meant" and was not knowledgeable about his client in that he did not know that the City and CERS had agreed to Manager's Proposal 2.

36. Under GAAS, by issuing an unqualified audit report, Saiz opined that the footnote disclosures in the financial statements were reasonably adequate. AICPA Codification of Auditing Standards, AU § 431.01. For this purpose, GAAS required Saiz to, among other things (a) obtain sufficient competent evidential matter through inspection, observation, inquiries, and confirmations to afford a reasonable basis for such audit report; and (b) exercise due professional care in performing the audit, including exercising professional skepticism in performing audit procedures and gathering and analyzing audit evidence. As alleged above, with respect to the footnote disclosures, Saiz failed to obtain sufficient competent evidential matter and to exercise due professional care.

37. GAAS additionally imposes certain requirements on auditors when they consent to their audit opinions being included in a securities offering document. Specifically, GAAS requires the auditor to read the information in the offering document and determine whether such information, or the manner of its presentation, is materially inconsistent with information, or the manner of its presentation, appearing in the financial statements. AICPA Audit & Accounting Guide, "Audits of State and Local Governments" §16.07. Upon concluding that that there is a material inconsistency, the auditor should determine whether the financial statements, the audit report, or both require revision. AICPA Codification of Auditing Standards, AU § 550.04. As alleged above, in 2003, upon learning of the substantial negative change in CERS's funded liability and the City's unfunded liability, Saiz failed to inquire into such matters or to determine

whether the financial statements, audit report, or both required revision.

E. The City's Voluntary Disclosure Results In The Lowering Of The Rating On The City's Bonds

38. The City eventually filed a Voluntary Report of Information on January 27, 2004, which disclosed information regarding CERS's current and estimated future funded status; the City's current and estimated future liabilities to CERS; the reasons for the substantial decrease in CERS's funded ratio and increase in the City's liability to CERS; and the City's previous use of CERS funds to pay for retiree health care and the City's estimated future liabilities for retiree health care.

39. Shortly after the disclosures in the Voluntary Report, the rating agencies lowered their ratings on the City's bonds.

FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations Of Section 17(a) Of The Securities Act

40. The Commission realleges and incorporates by reference paragraphs 1 through 38 above.

41. Defendants Saiz and CJO, and each of them, by engaging in the conduct described above, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly:

a. with scienter, employed devices, schemes, or artifices to defraud;

b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

or

c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

42. By engaging in the conduct described above, Defendants Saiz and CJO violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF
FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES
Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5 Thereunder

43. The Commission realleges and incorporates by reference paragraphs 1 through 38 above.

44. Defendants Saiz and CJO, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

45. By engaging in the conduct described above, Defendants Saiz and CJO violated, and unless restrained and enjoined will continue to violate, Section

10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that defendants Saiz and CJO committed the alleged violations.

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining each of the defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Order defendant Saiz to pay a civil penalty under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

IV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: December 10, 2007

KAREN MATTESON
Attorney for Plaintiff
Securities and Exchange Commission

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 07 DEC 10 PM 2:36 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY: DEPUTY

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

THOMAS J. SAIZ, and CALDERON, JAHAM & OSBORN, an accountancy corporation

(b) County of Residence of First Listed Plaintiff ____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Karen Matteson, Securities and Exchange Commission, 5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036; (323) 965-3840

Attorneys (If Known)

R. James Schnieders, Esq., Garrett & Tully, APC, 4165 E. Thousand Oaks Blvd., Suite 201, Westlake Village, CA 91362; (805)446-4141

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☒ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
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☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
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FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
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☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt.Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

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☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

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☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
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☐ 810 Selective Service
☒ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
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☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 USC 77q(a); 15 USC 78j(b) & 17 CFR 240.10b-5

Brief description of cause:
Securities fraud.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ____ DOCKET NUMBER ____

DATE
12/10/2007

SIGNATURE OF ATTORNEY OF RECORD
[signature]

FOR OFFICE USE ONLY

RECEIPT # ____ AMOUNT ____ APPLYING IFP ____ JUDGE ____ MAG. JUDGE ____

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.